



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 31, 1996

Mr. R. B. Hunsaker
Law Offices of R. B. Hunsaker
112 W. Ocean Blvd.
Los Fresnos, Texas 78566

OR96-0121

Dear Mr. Hunsaker:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37736.

The City of Los Fresnos (the "city"), which you represent, received a request for "the production and arrangement of routine, on-going, access to the police department's daily dispatch logs." The requestor later submitted a request for these documents for the calendar week beginning December 11, 1995. You claim that the requested information does not exist and that it is excepted from disclosure under section 552.108 of the Government Code.¹

Chapter 552 of the Government Code imposes a duty on governmental bodies seeking a decision pursuant to section 552.301 to submit that request and the exceptions claimed to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for a decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. See, e.g., Open Records

¹You state in your request letter to this office that you understand that the contents of your request letter are confidential. Your understanding is incorrect. Request letters for open records decisions, including arguments for withholding the information, are generally open. Open Records Decision No. 459 (1987).

Decision No. 150 (1977) (presumption of openness overcome by showing that information is made confidential by another source of law or affects third party interests).

You claim that "since the original request was not specific as to date, time, information sought, etc., and now [the requestor is] asking for information concerning 'radio logs' that don't exist as of the date of [the] request, [you] do not feel that the city is in violation of the '10-day rule' in requesting an A.G. opinion." We disagree. Numerous opinions of this office have addressed situations in which a governmental body has received either an "overbroad" written request for information or a written request for information that the governmental body is unable to identify.

We have stated that a governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision No. 87 (1975). It is nevertheless proper for a governmental body to require a requestor to identify the records sought. Open Records Decision Nos. 304 (1982); 23 (1974). For example, where governmental bodies have been presented with broad requests for information rather than specific records we have stated that the governmental body may advise the requestor of the types of information available so that he may properly narrow his request. Open Records Decision No. 31 (1974).²

Open Records Decision No. 561 (1990) at 8-9 (footnote added). However, this step should be taken within the ten days provided for in the Government Code. The request is dated November 1, 1995; however, the city did not respond until December 5, 1995. In that letter, the city denied the requestor access to the records. The city did not request an opinion from this office until December 11, 1995. Therefore, unless some compelling reason exists, the requested information is public.

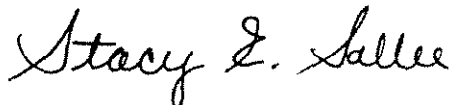
Chapter 552 does not require a governmental body to comply with a standing request for information to be collected or prepared in the future. See Attorney General Opinion JM-48 (1983). Additionally, the Chapter 552 does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.-San Antonio 1978, writ dismissed); Open Records Decision No. 452 (1986) at 3. As the request sought information that had not yet been created, the city need not comply with the request. However, because there is nothing to prevent the requestor from making daily requests for each day's newly created dispatch log, this office will address your arguments concerning the applicability of section 552.108 to the police department's daily log sheets.

²We note that in the last legislative session, the Government Code was amended to add a provision stating that if a request for information is unclear, a governmental body may ask the requestor to clarify the request. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 15, 1995 Tex. Sess. Law Serv. 5127, 5134 (to be codified at Gov't Code § 552.222(b)).

Section 552.108 excepts records from required public disclosure only when release of the information would "unduly interfere" with law enforcement or prosecution. Open Records Decision Nos. 434 (1986), 287 (1981). The governmental body claiming the exception must reasonably explain, if the information does not supply the explanation on its face, how release of the records would unduly interfere with law enforcement. Open Records Decision No. 287 (1981). However, you have not demonstrated how release of this information would unduly interfere with law enforcement. Additionally, in Open Records Decision No. 394 (1983), this office determined that there was no qualitative difference between the information contained in police dispatch records and that which was expressly held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curium*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing holding in *Houston Chronicle*). We conclude that absent a demonstration to our office that the release of specific requested information will unduly interfere with law enforcement, daily dispatch logs are not excepted from disclosure pursuant to section 552.108.³

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 37736

³You state that the requestor "has not revealed who he is representing nor the purpose for his nebulous request." We note that the Government Code expressly prohibits a governmental entity from inquiring as to the purpose of a request under the Act. Gov't Code § 522.222; *see* Open Records Decision Nos. 542 (1990) (Chapter 552 prohibits consideration of motives of requesting party), 508 (1988) (same).

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